IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANTS' MAIN BRIEF ON APPEAL

APPLICANTS:	Matthias Huetsch, et al.	ATTY DOCKET NO:	30014200-1013
SERIAL NO.:	09/932,717	GROUP ART UNIT:	2194
DATE FILED:	August 17, 2001	EXAMINER:	Qing Yuan Wu
INVENTION:	"LOAD BALANCING METHOD AND SYSTEM USING MULTIPLE LOAD BALANCING SERVERS" (As Amended)		

Mail Stop Appeal Brief - Patents
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Appellants submit herewith Appellants' Main Brief on Appeal under 37 C.F.R. §41.37 in support of the Notice of Appeal mailed on January 19, 2007. The Commissioner is hereby authorized to charge the amount of $500.00 for the requisite filing fee for filing the Main Brief on Appeal to the Appellants' Attorneys' credit card. Credit Card payment for the fee is made via the electronic submission process.

The Commissioner is hereby authorized to charge any deficiency in fees associated with this communication or credit any overpayment to Deposit Account No. 19-3140.

Respectfully Submitted,

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P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

In accordance with the provisions of 37 C.F.R. §41.37, Appellants submit this Main Brief on Appeal pursuant to the Notice of Appeal mailed on January 19, 2007 in the above-identified application.

I. REAL PARTY IN INTEREST:

The real party in interest in the present appeal is the Assignee, Sun Microsystems, Inc.. The assignment was recorded in the U.S. Patent and Trademark Office at Reel 012409, Frame 0328.

II. RELATED APPEALS AND INTERFERENCES:

Appellants are not aware of any related appeals or interferences.

III. STATUS OF CLAIMS:

Claims 1-26 are pending in the application.

Claims 1-26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *He, et al. (U.S. Patent No. 6,671,259)("He")* in view of *Zisapel, et al. (U.S. Patent No. 6,249,801)("Zisapel")*.

The present appeal is directed to claims 1-26, which were finally rejected in an Office Action dated September 19, 2006.

A copy of claims 1-26 is appended hereto as the Claims Appendix.

IV. STATUS OF AMENDMENTS:

An Amendment "E" After Final was filed on November 17, 2006 in response to the final office action dated September 19, 2006. In an Advisory Action dated December 13, 2006, the Examiner identified that the Amendment "E" After Final has been entered for purposes of appeal.

Thus, all amendments have been entered in this application.

V. SUMMARY OF CLAIMED SUBJECT MATTER:

Claims 1-26 are currently pending. Claims 1, 5, 11, 14, 18, 22, and 26 are the only pending independent claims under consideration. Claims 2-4, 6-10, 12, 13, 15-17, 19-21, and 23-35 depend directly or indirectly from claims 1, 5, 11, 14, 18, 22, and 26.

Independent claims 1, 5, 11, 14, 18, 22, and 26 are summarized below.

Claim 1:

Referring to Figure 1 as an illustrative example, claim 1 relates to a method for balancing a load in a network having a load balancing slave server 18, a load balancing master server 16, a plurality of processing servers 22, 24, 26, and a client 10. (Page 7, lines 16-21; page 8, lines 4-7).

Referring to Figures 10 and 11, the load balancing master server 16 selects the load balancing slave server 18 to receive a request from the client 10 to perform a processing. (Page 8, lines 5-7; page 19, lines 4-5).

The load balancing slave server 18 receives the request from the client 10 to perform the processing, after the load balancing master server 16 selects the load balancing slave server 18. (Page 25, lines 15-18; Figure 10 item 1002; Figure 11 item 1102).

The load balancing slave server 18 sends the request to the load balancing master server 16 in response to the receipt of the request. (Page 25, lines 18-21; Figure 10 item 1004; Figure

11 item 1104).

The load balancing master server 16 determines a load of each of the plurality of processing servers. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006).

The load balancing master server 16 selects a selected one of the plurality of processing servers 22, 24, 26 that is suitable for performing the processing. The selected one of the plurality of processing servers 22, 24, 26 is selected based on the load of each of the plurality of processing servers 22, 24, 26. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006).

The load balancing master server 16 sends an identifier of the selected one of the plurality of processing servers to the load balancing slave server 18. (Page 25, line 22-page 26, line 2; Figure 10 item 1008).

The load balancing slave server 18 establishes a communication link between the selected one of the plurality of processing servers 22, 24, 26 and the client 10 to perform the processing. (Page 26, lines 3-16; Figure 11 item 1114).

Claim 5:

Referring to Figure 1 as an illustrative example, claim 5 relates to a method in a data processing system having a first 16 and a second load balancing server 18 and having a plurality of processing servers 22, 24, 26. (Page 7, lines 16-21; page 8, lines 4-7).

Referring to Figures 10 and 11, the second load balancing server 16 selects the first load balancing server 18 to receive a request from a client 10 to perform a processing. (Page 8, lines 5-7; page 19, lines 4-5).

The first load balancing server 18 receives the request to perform the processing, after the second load balancing server 16 selects the first load balancing server 18. (Page 25, lines 15-18; Figure 10 item 1002; Figure 11 item 1102).

The first load balancing server 18 sends the request to the second load balancing server 16. (Page 25, lines 18-21; Figure 10 item 1004; Figure 11 item 1104).

The second load balancing server 16 determines a load of each of the plurality of processing servers 22, 24, 26. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006).

The second load balancing server 16 selects a selected one of the plurality of processing servers 22, 24, 26 that is suitable for performing the processing. The selection is performed based on the load of each of the plurality of processing servers 22, 24, 26. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006).

The second load balancing server 16 sends an identifier of the selected one of the

plurality of processing servers 22, 24, 26 to the first load balancing server 18. (Page 25, line 22-page 26, line 2; Figure 10 item 1008).

The second load balancing server 16 sends to the selected one of the plurality of processing servers 22, 24, 26 an indication to perform the processing. (Page 27, lines 8-12; Figure 11 item 1108).

Claim 11:

Claim 11 relates to a data processing system comprising a plurality of processing servers 22, 24, 26, a client 10 that sends a request, a load balancing slave server 18, and a load balancing master server. (Page 7, lines 16-21; page 8, lines 4-7; Figure 1).

Referring to Figures 10 and 11, the load balancing slave server 18 is selected by a load balancing master server 16 to receive the request from the client 10 after the load balancing slave server 18 is selected. (Page 8, lines 5-7; page 19, lines 4-5). The load balancing slave server 18 sends the request to an external source for a selection of one of the plurality of processing servers 22, 24, 26 that is suitable for performing a processing. (Page 25, lines 18-21; Figure 10 item 1004; Figure 11 item 1104). The load balancing slave server 18 receives an indication of the selected one of the plurality of processing servers 22, 24, 26 from the external source. (Page 25, line 22-page 26, line 2; Figure 10 item 1008). The load balancing slave server 18 establishes a communication link between the selected one of the plurality of processing servers 22, 24, 26 and the client 10 to perform the processing. (Page 26, lines 3-16; Figure 11 item 1114).

The load balancing master server 16 selects the load balancing slave server 18 to receive the request from the client 10 after the load balancing slave server 18 is selected. (Page 8, lines 5-7; page 19, lines 4-5). The load balancing master server 16 receives the request from the load balancing slave server 18. (Page 25, lines 18-21; Figure 10 item 1004; Figure 11 item 1104). The load balancing master server 16 determines a load of each of the plurality of processing servers 22, 24, 26. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006). The load balancing master server 16 selects the selected one of the plurality of processing servers 22, 24, 26 based on the load of each of the plurality of processing servers 22, 24, 26. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006). The load balancing master server 16 sends the indication of the selected one of the plurality of processing servers 22, 24, 26 to the load balancing slave server 18. (Page 25, line 22-page 26, line 2; Figure 10 item 1008).

Claim 14:

Referring to Figure 1 as an illustrative example, claim 14 relates to a data processing system comprising a plurality of processing servers 22, 24, 26, a client 10 that sends a request to have processing performed in a load balanced manner, a first load balancing server 18, and a second load balancing server 16. (Page 7, lines 16-21; page 8, lines 4-7; Figure 1).

Referring to Figures 10 and 11, the first load balancing server 18 is selected by the second load balancing server 16 to receive the request from the client 10 and receives the request from the client 10 after the first load balancing server 18 is selected. (Page 8, lines 5-7; page 19, lines 4-5).

The second load balancing server 16 selects the first load balancing server 18 to receive the request from the client 10. (Page 8, lines 5-7; page 19, lines 4-5). The second load balancing server 16 receives the request from the first load balancing server 18. (Page 25, lines 18-21; Figure 10 item 1004; Figure 11 item 1104). The second load balancing server 16 determines a load of each of the plurality of processing servers 22, 24, 26. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006). The second load balancing server 16 selects a selected one of the plurality of processing servers 22, 24, 26 that is suitable for performing the processing in the load balanced manner. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006). The second load balancing server 16 sends to the selected one of the plurality of processing servers 22, 24, 26 an indication to perform the processing, wherein the selection is based on the load of each of the plurality of processing servers. (Page 27, lines 8-12; Figure 11 item 1108).

Claim 18:

Referring to Figure 1 as an illustrative example, claim 18 relates to a computer-readable medium containing instructions that cause a data processing system to perform a method for balancing a load in a network having a load balancing slave server 18, a load balancing master server 16, a plurality of processing servers 22, 24, 26, and a client 10. (Page 7, lines 16-21; page 8, lines 4-7; page 12, lines 16-23; Figure 1).

The load balancing master server 16 selects the load balancing slave server 18 to receive a request from the client 10 to perform a processing. (Page 8, lines 5-7; page 19, lines 4-5).

The load balancing slave server 18 receives the request from the client 10 to perform the processing after the load balancing master server 16 selects the load balancing slave

server 18. (Page 25, lines 15-18; Figure 10 item 1002; Figure 11 item 1102).

The load balancing slave server 18 sends the request to the load balancing master server 16 in response to the receipt of the request. (Page 25, lines 18-21; Figure 10 item 1004; Figure 11 item 1104).

The load balancing master server 16 determines a load of each of the plurality of processing servers 22, 24, 26. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006).

The load balancing master server 16 selects a selected one of the plurality of processing servers 22, 24, 26 that is suitable for performing the processing, wherein the selected one of the plurality of processing servers is selected based on the load of each of the plurality of processing servers. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006).

The load balancing master server 16 sends an identifier of the selected one of the plurality of processing servers 22, 24, 26 to the load balancing slave server 18. (Page 25, line 22-page 26, line 2; Figure 10 item 1008).

The load balancing slave server 18 establishes a communication link between the selected one of the plurality of processing servers 22, 24, 26 and the client 10 to perform the processing. (Page 26, lines 3-16; Figure 11 item 1114).

Claim 22:

Referring to Figure 1 as an illustrative example, claim 22 relates to a computer readable medium containing instructions that cause a data processing system to perform a method for load balancing having a first 18 and a second load balancing server 16 and having a plurality of processing servers 22, 24, 26. (Page 7, lines 16-21; page 8, lines 4-7; page 12, lines 16-23; Figure 1).

Referring to Figures 10 and 11 as an illustrative example, the second load balancing server 16 selects the first load balancing server 18 to receive a request from a client 10 to perform a processing. (Page 8, lines 5-7; page 19, lines 4-5).

The first load balancing server 18 receives the request to perform the processing, after the second load balancing server 16 selects the first load balancing server 18. (Page 25, lines 15-18; Figure 10 item 1002; Figure 11 item 1102).

The first load balancing server 18 sends the request from to the second load balancing server 16. (Page 25, lines 18-21; Figure 10 item 1004; Figure 11 item 1104).

The second load balancing server 16 determines a load of each of the plurality of

processing servers 22, 24, 26. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006).

The second load balancing server 16 selects a selected one of the plurality of processing servers 22, 24, 26 that is suitable for performing the processing, wherein the selection is performed based on the load of each of the plurality of processing servers. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006).

The second load balancing server 16 sends to the selected one of the plurality of processing servers 22, 24, 26 an indication to perform the processing. (Page 27, lines 8-12; Figure 11 item 1108).

Claim 26:

Referring to Figure 1 as an illustrative example, claim 26 relates to a load balancer for balancing a load in a network having a load balancing slave server 18, a load balancing master server 16, a plurality of processing servers 22, 24, 26, and a client 10. (Page 7, lines 16-21; page 8, lines 4-7; Figure 1).

There is a means for selecting by the load balancing master server 16 the load balancing slave server 18 to receive a request from a client 10 to perform a processing. (Page 8, lines 5-7; page 19, lines 4-5).

There is a means for receiving at the load balancing slave server 18 the request from the client 10 to perform the processing, after the load balancing master server 16 selects the load balancing slave server 18. (Page 25, lines 15-18; Figure 10 item 1002; Figure 11 item 1102).

There is a means for sending by the load balancing slave server 18 the request to the load balancing master server 16 in response to the receipt of the request. (Page 25, lines 18-21; Figure 10 item 1004; Figure 11 item 1104).

There is a means for determining a load of each of the plurality of processing servers 22, 24, 26 by the load balancing master server 16. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006).

There is a means for selecting by the load balancing master server 16 a selected one of the plurality of processing servers 22, 24, 26 that is suitable for performing the processing, wherein the selected one of the plurality of processing servers is selected based on the load of each of the plurality of processing servers. (Page 11, lines 8-20; page 25, lines 21-22; Figure 10 item 1006).

There is a means for sending an identifier of the selected one of the plurality of

processing servers 22, 24, 26 from the load balancing master server 16 to the load balancing slave server 18. (Page 25, line 22-page 26, line 2; Figure 10 item 1008).

There is a means for establishing by the load balancing slave server 18 a communication link between the selected one of the plurality of processing servers 22, 24, 26 and the client 10 to perform the processing. (Page 26, lines 3-16; Figure 11 item 1114).

It is possible that the above-described elements of claim 26 may be interpreted to invoke 35 U.S.C. §112, paragraph 6. In this case, each of the elements is performed by the load balancer program 58 in the load balancer 12 memory 56 and executed by processor 50.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL:

The ground of rejection to be reviewed on appeal are as follows:

Claims 1-26 are rejected under 35 U.S.C. §103(a) as being unpatentable over *He, et al. (U.S. Patent No. 6,671,259)("He")* in view of *Zisapel, et al. (U.S. Patent No. 6,249,801)("Zisapel")*

VII. ARGUMENT:

As set forth below, claims 1-26 are not unpatentable under 35 U.S.C. §103(a) based on the cited references. Appellants respectfully submit the Examiner's assertions are incorrect as a matter of fact and law. Thus, for the reasons set forth below, Appellants respectfully request that this Board reverse the rejection of claims 1-26.

He in view of *Zisapel* fails to render obvious claims 1-26 because these references fail to disclose or suggest a first load balancing server that receives a request from a client and sends it to a second load balancing server, after the second load balancing server selects the first load balancing server to receive the request

Independent claims 1, 5, 11, 14, 18, 22, and 26 each claim subject matter relating to a master (or second) load balancing server selecting a slave (or first) load balancing server to receive a request from a client to perform a processing. After being selected by the master (second) load balancing server to receive the request, the slave (first) load balancing server receives the request from the client and forwards it to the master (second) load balancing server. The master (second) load balancing server determines a load of each of a plurality of processing servers, and selects a selected one of the plurality of processing servers that is suitable for performing the processing. In an illustrative comparison, it is as if a person (the master (second) load balancing server) says to another person (the slave (first) load balancing server), "You receive the client's request and then forward it to me." This is clearly unlike *He* in view of

Zisapel, which fails to disclose or suggest a first load balancing server that receives a request from a client and sends it to a second load balancing server, after the second load balancing server selects the first load balancing server to receive the request.

A.) *He* fails to disclose or suggest a first load balancing server that receives a request from a client and sends it to a second load balancing server, after the second load balancing server selects the first load balancing server to receive the request

Referring to *He* Figure 1, *He* discloses a system having a plurality of load balancing servers LB 1 - LB N and a load balancing selector LBS. A client's request to perform processing is received at the load balancing selector LBS, which sends the request to a determined load balancing server, such as LB 1. (*He* 3:65-4:4). The selected load balancing server then chooses a processing server to perform the processing. Thus, the load balancing selector LBS receives a request from the client and forwards it to a chosen load balancing server LB 1 - LB N.

Nowhere does *He* suggest that its chosen load balancing server, *e.g.* LB 1, selects the load balancing selector LBS to receive the client's request. Instead, *He's* load balancing selector LBS receives all client requests and is not first chosen by any load balancing server to receive the requests. In other words, *He's* load balancing selector LBS is a gateway that forwards client requests to load balancing servers. The load balancing servers to not select the load balancing selector LBS to be the gateway.

Thus, *He* fails to disclose or suggest a first load balancing server that receives a request from a client and sends it to a second load balancing server, after the second load balancing server selects the first load balancing server to receive the request.

B.) *He* in view of *Zisapel* fails to disclose or suggest a first load balancing server that receives a request from a client and sends it to a second load balancing server, after the second load balancing server selects the first load balancing server to receive the request

Zisapel also fails to disclose or suggest a first load balancing server that receives a request from a client and sends it to a second load balancing server, after the second load balancing server selects the first load balancing server to receive the request. *Zisapel* teaches that a load balancing server can tell a client to redirect a request to another load balancing server. *Zisapel* 1:49-53. The load balancing server receives a request from a client, and when the load balancing server is unavailable, the load balancing server notifies the client of another load balancing server's URL (*i.e.*, its address). *Id.* Then, the client can resend its request to the other load balancing server.

As described above, Applicants' claimed invention can be compared to a person (the master (second) load balancing server) saying to another person (the slave (first) load balancing server), "You receive the client's request and then forward it to me." This is clearly unlike *Zisapel*, in which a master load balancing server says to the client, "I am not available to receive your request, send it to another load balancing server instead." In other words, *Zisapel* fails to disclose or suggest a load balancing server receiving a client request from another selected load balancing server. Instead, *Zisapel's* load balancing servers each receive client requests directly from the client.

Thus, *He* in view of *Zisapel* still fails to disclose or suggest a first load balancing server that receives a request from a client and sends it to a second load balancing server, after the second load balancing server selects the first load balancing server to receive the request.

Accordingly, *He* in view of *Zisapel* fails to disclose or suggest claims 1, 5, 11, 14, 18, 22, and 26.

Claims 2-4, 6-10, 12, 13, 15-17, 19-21, and 23-25 depend directly or indirectly from claims 1, 5, 11, 14, 18, 22, and 26 and are therefore allowable for at least the same reasons that claims 1, 5, 11, 14, 18, 22, and 26 are allowable.

Appellant respectfully requests that the Board reverse the rejection of claims 1-26.

VIII. CONCLUSION:

For the foregoing reasons, Appellants respectfully submit that the rejections posed by the Examiner are improper as a matter of law and fact. Accordingly, Appellants respectfully request the Board reverse the rejections of claims 1-26.

Respectfully submitted,

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CLAIMS APPENDIX

1. (previously presented) A method for balancing a load in a network having a load balancing slave server, a load balancing master server, a plurality of processing servers, and a client, the method comprising the steps of:

selecting by the load balancing master server the load balancing slave server to receive a request from the client to perform a processing;

receiving at the load balancing slave server the request from the client to perform the processing, after the load balancing master server selects the load balancing slave server;

sending by the load balancing slave server the request to the load balancing master server in response to the receipt of the request;

determining a load of each of the plurality of processing servers by the load balancing master server;

selecting by the load balancing master server a selected one of the plurality of processing servers that is suitable for performing the processing, wherein the selected one of the plurality of processing servers is selected based on the load of each of the plurality of processing servers;

sending an identifier of the selected one of the plurality of processing servers from the load balancing master server to the load balancing slave server; and

establishing by the load balancing slave server a communication link between the selected one of the plurality of processing servers and the client to perform the processing.

2. (previously presented) The method of claim 1, wherein the step of establishing further includes the step of:

routing the communication link between the selected one of the plurality of processing servers and the client through the load balancing slave server.

3. (previously presented) The method of claim 1, further comprising the step of:

receiving a plurality of load metrics from each of the plurality of processing servers.

4. (previously presented) The method of claim 1, wherein the step of determining further comprises the step of:

receiving a load metric with the request from the load balancing slave server at the load balancing master server.

5. (previously presented) A method in a data processing system having a first and a second load balancing server and having a plurality of processing servers, the method comprising the steps of:

selecting by the second load balancing server the first load balancing server to receive a request from a client to perform a processing;

receiving by the first load balancing server the request to perform the processing, after the second load balancing server selects the first load balancing server;

sending the request from the first load balancing server to the second load balancing server;

determining a load of each of the plurality of processing servers by the second load balancing server;

selecting by the second load balancing server a selected one of the plurality of processing servers that is suitable for performing the processing, wherein the selection is performed based on the load of each of the plurality of processing servers;

sending an identifier of the selected one of the plurality of processing servers from the second load balancing server to the first load balancing server; and

sending by the second load balancing server to the selected one of the plurality of processing servers an indication to perform the processing.

6. (previously presented) The method of claim 5, wherein the step of sending by the second load balancing server further comprises the step of:

identifying to the first load balancing server the selected one of the plurality of processing servers after the indication to perform the processing has been sent to the selected one of the plurality of processing servers.

7. (original) The method of claim 5, further comprising the steps of:

receiving a plurality of load metrics that originate from the plurality of processing servers at the second load balancing server.

8. (previously presented) The method of claim 5, wherein sending the request further includes the step of:

encoding at least one load metric in the request.

9. (previously presented) The method of claim 5, wherein the first load balancing server is a load balancing slave.

10. (previously presented) The method of claim 5, wherein the second load balancing server is a load balancing master.

11. (previously presented) A data processing system, comprising:

a plurality of processing servers;

a client sends a request;

a load balancing slave server that is selected by a load balancing master server to receive the request from the client after the load balancing slave server is selected, that sends the request to an external source for a selection of one of the plurality of processing servers that is suitable for performing a processing, that receives an indication of the selected one of the plurality of processing servers from the external source, and that establishes a communication link between the selected one of the plurality of processing servers and the client to perform the processing; and

the load balancing master server that selects the load balancing slave server to receive the request from the client after the load balancing slave server is selected, that receives the request from the load balancing slave server, that determines a load of each of the plurality of processing servers, that selects the selected one of the plurality of processing servers based on the load of each of the plurality of processing servers, and that sends the indication of the selected one of the plurality of processing servers to the load balancing slave server.

12. (previously presented) The data processing system of claim 11, wherein a plurality of load metrics are received at the load balancing master server from the plurality of processing servers that indicate the load on each of the plurality of processing servers.

13. (previously presented) The data processing system of claim 11, wherein at least one load metric is included in the request sent by the load balancing slave server to the external source.

14. (previously presented) A data processing system, comprising:

a plurality of processing servers;

a client that sends a request to have processing performed in a load balanced manner;

a first load balancing server that is selected by a second load balancing server to receive the request from the client and that receives the request from the client after the first load balancing server is selected; and

the second load balancing server that selects the first load balancing server to receive the request from the client, that receives the request from the first load balancing server, that determines a load of each of the plurality of processing servers, that selects a selected one of the plurality of processing servers that is suitable for performing the processing in the load balanced manner, and that sends to the selected one of the plurality of processing servers an indication to perform the processing, wherein the selection is based on the load of each of the plurality of processing servers.

15. (original) The data processing system of claim 14, wherein the first load balancing server is a load balancing slave.

16. (original) The data processing system of claim 14, wherein the second load balancing server is a load balancing master.

17. (previously presented) The data processing system of claim 14, wherein the second load balancing server is in receipt of a plurality of load metrics that originate from each of the plurality of processing servers and indicate the load on each of the plurality of processing servers.

18. (previously presented) A computer-readable medium containing instructions that cause a data processing system to perform a method for balancing a load in a network having a load balancing slave server, a load balancing master server, a plurality of processing servers, and a client, the method comprising the steps of:

selecting by the load balancing master server the load balancing slave server to

receive a request from the client to perform a processing;

receiving at the load balancing slave server the request from the client to perform the processing after the load balancing master server selects the load balancing slave server;

sending by the load balancing slave server the request to the load balancing master server in response to the receipt of the request;

determining a load of each of the plurality of processing servers by the load balancing master server;

selecting by the load balancing master server a selected one of the plurality of processing servers that is suitable for performing the processing, wherein the selected one of the plurality of processing servers is selected based on the load of each of the plurality of processing servers;

sending an identifier of the selected one of the plurality of processing servers from the load balancing master server to the load balancing slave server; and

establishing by the load balancing slave server a communication link between the selected one of the plurality of processing servers and the client to perform the processing.

19. (previously presented) The computer-readable medium of claim 18, wherein the step of establishing further includes the step of:

routing the communication link between the selected one of the plurality of processing servers and the client through the load balancing slave server.

20. (previously presented) The computer readable medium of claim 18, further comprising the step of:

receiving a plurality of load metrics from each of the plurality of processing servers.

21. (previously presented) The computer readable medium of claim 18, wherein the step of determining further comprises the step of:

receiving a load metric with the request from the load balancing slave server at the load balancing master server.

22. (previously presented) A computer readable medium containing instructions that cause a data processing system to perform a method for load balancing having a first and a second load balancing server and having a plurality of processing servers, the method comprising the steps of:

selecting by the second load balancing server the first load balancing server to receive a request from a client to perform a processing;

receiving by the first load balancing server the request to perform the processing, after the second load balancing server selects the first load balancing server;

sending the request from the first load balancing server to the second load balancing server;

determining a load of each of the plurality of processing servers by the second load balancing server;

selecting by the second load balancing server a selected one of the plurality of processing servers that is suitable for performing the processing, wherein the selection is performed based on the load of each of the plurality of processing servers; and

sending by the second load balancing server to the selected one of the plurality of processing servers an indication to perform the processing.

23. (previously presented) The computer-readable medium of claim 22, wherein the step of sending by the second load balancing server further comprises the step of:

identifying to the first load balancing server the selected one of the plurality of processing servers after the indication to perform the processing has been sent to the selected one of the plurality of processing servers.

24. (original) The computer-readable medium of claim 22, further comprising the steps of:

receiving a plurality of load metrics that originate from the plurality of processing servers at the second load balancing server.

25. (previously presented) The computer-readable medium of claim 22, wherein sending the request further includes the step of:

encoding at least one load metric in the request.

26. (previously presented) A load balancer for balancing a load in a network having a load balancing slave server, a load balancing master server, a plurality of processing servers, and a client, the method comprising the steps of:

means for selecting by the load balancing master server the load balancing slave server to receive a request from a client to perform a processing;

means for receiving at the load balancing slave server the request from the client to perform the processing, after the load balancing master server selects the load balancing slave server;

means sending by the load balancing slave server the request to the load balancing master server in response to the receipt of the request;

means for determining a load of each of the plurality of processing servers by the load balancing master server;

means for selecting by the load balancing master server a selected one of the plurality of processing servers that is suitable for performing the processing, wherein the selected one of the plurality of processing servers is selected based on the load of each of the plurality of processing servers;

means for sending an identifier of the selected one of the plurality of processing servers from the load balancing master server to the load balancing slave server; and

means for establishing by the load balancing slave server a communication link between the selected one of the plurality of processing servers and the client to perform the processing.

EVIDENCE APPENDIX

Appellants do not submit additional evidence with this appeal brief and no additional evidence has been submitted during prosecution.

RELATED PROCEEDINGS APPENDIX

Appellants are not aware of any related appeals or interferences with regard to the present application.